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Civil Action No. 7:05CV00512

OPINION

By: Jackson L. Kiser
Senior United States District Judge

As the Magistrate Judge explained in his previous order, an inmate may not challenge the validity of his conviction or sentence in a § 2241 petition, unless a § 2255 motion is “inadequate or ineffective to test the legality of [the inmate’s] detention.” Swain v. Pressley, 430 U.S. 372,

381 (1977). The United States Court of Appeals for the Fourth Circuit has held that a § 2255 motion is inadequate and ineffective to test the legality of an inmate's detention only when the following three elements are shown:

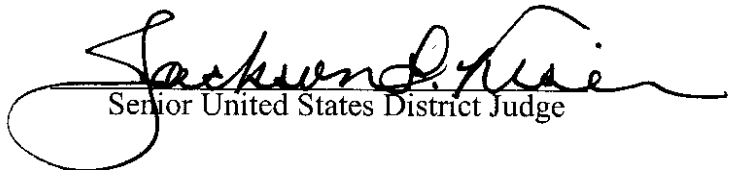
(1) at the time of conviction settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000).

In response to the Magistrate Judge's order, Ortiz argues that a § 2255 motion is inadequate because he has already filed a § 2255 motion, which was denied.¹ However, a procedural impediment to § 2255 relief, such as the rule against successive motions or the statute of limitations, does not render § 2255 review inadequate. See In re Vial, 115 F.3d 1192, 1194 at n. 5 (4th Cir. 1997). Considering Ortiz's petition in light of the standard set forth in In re Jones, it is clear that he cannot proceed under § 2241.² Accordingly, Ortiz's petition must be dismissed.

The Clerk is directed to send certified copies of this opinion and the accompanying order to the petitioner and counsel of record for the respondent.

ENTER: This 13th day of September, 2005.


Senior United States District Judge

¹ In his petition, Ortiz stated that he had not filed any previous motions under § 2255.

² A review of current federal law shows that the conduct for which Ortiz is currently incarcerated continues to constitute criminal offenses. See 21 U.S.C. §§ 841(a), 846.